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EB/ESC, USDOL FOR ILAB, DOE FOR INTERNATIONAL AFFAIRS,

E.O. 12958: N/A

TAGS: [ELAB](#) [ECON](#) [ENRG](#) [EPET](#) [PGOV](#) [PINR](#) [MX](#)

SUBJECT: PEMEX TECHNICAL STAFF OBJECTS TO INDIVIDUAL WORK
CONTRACTS

REF: MEXICO 3993

¶11. SUMMARY: This past July, Petroleos Mexicanos, Mexico's national petroleum company (Pemex), and the Petroleum Workers Union (STPRM) announced an agreement on a new collective bargaining contract for 2007-2009 (REFTEL). One of the most significant elements of this contract was an agreement between the company and the union to grant Pemex greater latitude in making personnel decisions. As a part of this newly granted leeway Pemex is requiring that some 32,000 members of its technical staff sign Individual Employment Contracts. According to Pemex these contracts will, for the first time ever, establish unambiguous work requirements for the company's technical staff and clearly define the roles of the technical staff and their supervisors. PEMEX says the contracts are needed to help reduce the nearly USD 750 million it pays out annually in labor dispute related law suits. The president of a newly forming union representing the technical staff and separate from the STPRM, says the Individual Employment Contracts will allow the company to fire tenured workers, renege on previously agreed to wages and benefits, outsource a large number of what are now permanent positions and ultimately lead to the privatization of Pemex. In examining the respective claims of Pemex and the technical staff it seems apparent that both sides have legitimate concerns. What is not yet apparent is a genuine willingness on either side to find a way to reach a negotiated settlement of their differences. END SUMMARY.

NEW CONTRACT ALLOWS NEW RULES

¶12. In July 2007, Petroleos Mexicanos, Mexico's national petroleum company (Pemex), and the Petroleum Workers Union (STPRM) announced an agreement on a new collective bargaining contract for 2007-2009. At the time the contract was both condemned and hailed by many labor and petroleum industry observers. The 2007-2009 Contract was condemned for the extremely generous wage and benefits package it granted the workers and their union and hailed because the company obtained significant new latitude in making personnel decisions. For example one of the concessions grants the company considerable leeway in transferring employees. As of July 2007, Pemex had some 16,000 workers who were only marginally employed that it wanted to transfer for business

or production reasons. This has now changed. Previously these employees could not be obliged to transfer for any reason but they can now be compelled to go wherever the work is.

¶3. In a further exercise of its newly granted latitude on personnel matters Pemex management, has decided to institute Individual Employment Contracts (IEC) for the roughly 32,000 members of its technical staff. According to an attorney for PEMEX, the IEC,s will, for the first time ever, establish specific job responsibilities and work requirements for the company,s technical staff; and clearly define the authority of and the relationships between members of the technical staff and their supervisors. The Pemex lawyer also indicated that the company expects that the IECs will allow it to reduce the 8 billion Pesos (approximately USD 750 million) it pays out annually in law suits and legal fees arising from labor disputes. Beginning roughly in mid-2005, Pemex began to define its technical staff as &trusted employees8 which, in the company,s view, allows them to be characterized as management level employees. Management level employees do not enjoy the same collective bargaining benefits and protections as working level staff.

THE TECHNICAL STAFF SEES THINGS DIFFERENTLY

¶4. Although from Pemex,s perspective its reasons for implementing the use of IECs are straightforward and logical the members of the company,s technical staff see things differently. According to Moises Flores Salmeron, President of the fledgling National Union of Trusted Workers of the

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Petroleum Industry (UNTCIP), signing an Individual Employment Contracts would be tantamount to surrendering employee benefits and legally established labor rights. Flores and the UNTCIP have denounced the IECs as a violation of worker rights.

¶5. One of the main issues for UNTCIP is its disagreement with Pemex,s unilateral decision to define &trusted8 employees as being fully equivalent to management level staff. Mexican labor law implicitly recognizes a class of workers who are neither labor nor management and who are often referred to as &trusted employees8. Such persons are usually hired because they possess some type of technical skills and they are normally paid at a salary grade equivalent to a mid-level manager. From a legal viewpoint a &trusted employee8 is not covered by collective bargaining agreements and as such an employee in this category would not be entitled to the same protections as a unionized worker. A &trusted employee8 might or might be authorized to exercise the same level of authority as a manager.

¶6. In a meeting with Mission Mexico,s Labor Counselor, Flores and several UNTCIP members clarified that at present the UNTCIP was only a civil association and not yet a legally recognized union. UNTCIP, they said, had applied for union status but federal labor authorities denied the application on a technicality because their use of the phrase &trusted employees8 did not meet the legally accepted definition. According to UNTCIP, in order to be considered &trusted employees8 as legally defined its member would have to meet four criteria; hold mid-level positions, function as supervisors, exercise inspection authority and be authorized to hire and fire. UNTCIP members meet the first three criteria but they cannot hire or fire.

¶7. For the most part UNTCIP members are engineers, accountants, geologists, and other technical specialists with limited supervisory responsibilities. The position of the UNTCIP members is that since Pemex never granted them the full authority to make management level decisions (even if they do earn management level salaries) it cannot

unilaterally now define them as management. They recognize that they are not legally part of the STPRM union but they contend that Mexico's constitution, as codified in various articles of the country's Federal Labor Law, grants them a certain floor level of benefits which all employers, Pemex included, are required to respect.

NEITHER SIDE OPEN TO THE OTHER'S PERSPECTIVE

¶8. In the disagreement between Pemex and UNTCIP over IECs neither side seems particularly open to the concerns of the other. For its part Pemex is trying to resolve a situation that was years in the making. At some point in its past Pemex began hiring skilled technicians on what was undoubtedly thought to be on an as needed basis and temporary basis. Ultimately thousands were hired but without going through the process of documenting them technical permanent employees of the trouble and expense of formally terminating them. For the most part these employees were treated as permanent unionized staff and routinely received all of the benefits extended to workers formally covered by collective bargaining agreements. Over time these employees began to think of themselves as unionized workers and to insist on receiving equal status as that accorded to their union coworkers. However, as these employees were not unionized and their employment status left intentionally vague, whenever a labor dispute or human resources related disagreement arose the only legal framework available for deciding these disagreements was Mexico's Federal Labor Law.

¶9. Mexico's Federal Labor Law significantly favors the employee over the employer. This preference given to the employee is often unevenly applied in cases involving private sector employers. However, in the case of the public sector, and Pemex is a government entity, the norm is for the courts to give not just preference but rather overwhelming preference to the employee and against the employer (i.e. the

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GOM). This partiality in favor of the employee against Pemex has lead to cottage industry in legal suits against the national petroleum company. According to an attorney for PEMEX, as of September 31, 2007 there were 22,000 labor related legal suits pending against the company and approximately 30 legal firms whose sole business is dedicated to litigation against Pemex. From the national oil company's perspective, the IECs offer a way to resolve a long neglected personnel issue and bring to an end the endless labor suits against it.

¶10. Looking at the matter from UNTCIP's perspective, IECs are an attempt by the company to impose upon them the legal framework needed to terminate their employment. UNTCIP believes that the current system under which they are employed by Pemex can be modified to address the company's without violating their legal rights. If imposed as is the IECs, they say, will eliminate the current system for hiring &trusted employees⁸, prevent such employees from earning overtime, eliminate benefits routinely given to other (unionized) employees, do away with seniority currently help by &trusted employees⁸, convert permanent employees in contract employees hired on a annual basis, allow PEMEX to transfer employees at will, even against the wishes of the employee and will prevent &trusted employees⁸ from filing legal actions against Pemex in cases when the worker believes his/her employment has been terminated without cause.

¶11. In November the UNTCIP presented PEMEX with a petition signed by over 2,000 employees urging the company to discontinue its forced imposition of IECs. To date there has been no public response to this petition. UNTCIP is convinced that Pemex intends to impose IECs on them with or without their consent. Once that happens the UNTCIP contends, IECs will be used to facilitate the outsourcing of

job currently held by &trusted employees8 after that the company will have nothing to prevent it from opening the door to the privatization of Pemex. Thus far there is little reliable information to support this contention and it may simply be a parroting of PRD (Mexico,s main opposition party) political slogans. Nevertheless several UNTCIP members asserted this point to post,s Labor Counselor as if it were an inevitable fact. UNTCIP is completely distrustful of Pemex,s intentions with regards to the IECs and seems unable to credit that the oil company might simply wish to address significant shortcoming in is personnel system and reduce the problems and expense generated annually by nearly endless litigation.

COMMENT

¶12. The long running problems of PEMEX,s haphazard personnel system for &trusted employees8 clearly needed some sort of solution and the decision to address this dilemma with IECs was certainly one way to address the situation. Undoubtedly the IECs will take care of the problem from the company,s perspective. However, it seems that Pemex did not anticipate (and may not have cared) that the changes it believes make sense from the perspective of ease and efficiency might not be viewed that way by the employees being asked to sign the IECs. Some advance consultation with the effected employees would have been useful. On the other hand, the employees affiliated with UNTCIP are not being realistic in accusing Pemex of only wanting to get rid of them, cut back their benefits and then privatize the national oil company. The irregular employment situation and the mounting legal costs arising from this long neglected personnel arrangement could not be allowed to continue indefinitely. At this point it is unlikely that the issue of IECs will have any immediate impact on Pemex,s operation but if the matter is not dealt with properly it could become another intractable labor issue on top of the many others the oil company already has.

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